

*R. H. Ashmole's Librarian -
Charles II. etc.*

2. The Opinion of the **JUDGES** upon the Clause in the Act of 22 & 23 Car. II. Regis cap. 9. for giving no more Costs than Damages, delivered at *Serjeants-Inn* in *Chancery-lane*, London, in *Trinity Term*. Anno 23. *Ejusdem Regis*.

16. June. 1688.

The Clause in the Act.

AND for Prevention of trivial and vexatious Suits in Law, whereby many good Subjects of this Realm have been and are daily undone contrary to the intention of an Act made in the 43 year of Queen Eliz. for avoiding of infinite numbers of small and trivial Suits commenced in the Courts at Westminster. Be it farther Enacted for making the said Law Effectual, that from and after the first of May aforesaid, In all Actions of Trespas, Assault and Battery and other personal Actions wherein the Judge at the Trial of the cause shall not find and certifie under his hand upon the back of the Record, That an Assault and Battery was sufficiently proved by the Plaintiff against the Defendant, or that the Freehold or Title of the Land mentioned in the Plaintiffs Declaration was chiefly in question, The Plaintiff in such Action, in case the Jury shall find the Damages to be under the value of forty Shillings, shall not recover or obtain more Costs of Suit than the Damages so found shall amount unto. And if any more Costs in any such Action shall be Awarded, The Judgement shall be void, and the Defendant is hereby acquitted of and from the same, and may have his Action against the Plaintiff for such vexatious Suits, and recover his Damages and Costs of such his Suit in any of the said Courts of Record.

The JUDGES Opinion.

- I. That Actions of Debt, are not within this Clause.
- II. That no Action upon the Case *sur Assumpsit*, Account, or other personal Actions (other than for Assault and Battery or voluntary Trespas, where the Title comes not, nor cannot come in Question) is within this Clause.
- III. That the Judge is bound to Certifie on Actions of Assault and Battery where the Jury shall find Damages to Ten Shillings or less, That the Battery is sufficiently proved, otherwise the Plaintiff is to have no more Costs than Damages.
- IV. That if the Defendant pleads *son Assault Demesne*, and the Jury find it *ad Dampnum Querentis*, The Certificate must be, that the Jury find by the Defendants plea, That the Battery is admitted and sufficiently proved.
- V. That if an Assault be proved, and no Battery, There needs no Certificate.
- VI. That in case of a Certificate, where it is requisite, it must be Indorsed on the pannel or *Nomina Jur'* with the Judges hand to it immediately after the Trial, and the Certificate is to be, That the Battery is fully proved.
- VII. That the Clause extends onely, where Damages are onely to be recovered, and not in Debt, because Debt is not within the words: (although the Debt be under Forty Shillings, it is all one, it needs no Certificate.)
- VIII. That in all Actions for a Common, a Way, a Nufance, Lights, Water-courses, &c. The Judges may Certifie, because the Freehold may come in Question, although it be not mentioned in the Declaration.
- IX. That the Clause extends not to Judgements by default, or Writs of Inquiry of Damages.

Trinity Term. MDCLXXI.

Matthew Hale.	Jo. Vaughan.	Edw. Turner.
Tho. Twysden.	Tho. Tyrrill.	Hugh Wyncham.
Hi. Baynsford.	Jo. Archer.	Chz. Turner.
Will. Bozeton.	Will. Wylde.	T. Littleton.

March 31. 1688. This may be Printed.

R. WRIGHT.